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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: MANILA, PHILIPPINES Date: **NOV 17 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that a review of the documentation in the record, when considered in its totality fails to establish the existence of hardship that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to immigrate to the United States. The application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated March 17, 2005.

On appeal, counsel challenges the finding that separation is not extreme hardship and states that the Service's denial negates the values that the United States espouses and contradicts the public policy regarding family unity. *Counsel's Brief*, dated May 6, 2005.

In the present application, the record indicates that on January 21, 1999 the applicant entered the United States on a C1 visa with authorization to stay until February 19, 1999. The applicant did not depart the United States and remained in the United States until March 8, 2002, when he was removed. Therefore, the applicant accrued unlawful presence from when his authorized stay expired on February 19, 1999 until March 8, 2002, the date he was removed from the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his March 8, 2002 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who

is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the Philippines or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record includes a brief from the applicant's counsel and the supplement form to the I-601 from the USCIS office in Manila that was completed by the applicant. No supporting documentation was submitted. The AAO notes that without documentary evidence to support the claims made, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The first part of the extreme hardship analysis requires the applicant to show that his U.S. citizen spouse would suffer extreme hardship as a result of relocating to the Philippines. This part of the extreme hardship analysis was not addressed in the waiver application. Thus, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to the Philippines.

The second part of the extreme hardship analysis requires the applicant to establish that his U.S. citizen spouse will suffer extreme hardship as a result of separation from the applicant. Counsel's assertion that separation from family in and of itself establishes extreme hardship is unconvincing. Counsel does not cite any case law or other legal sources to support her assertions. The applicant states, in the supplemental form to the I-601, that his spouse is suffering physically and mentally because of being separated from the applicant. The applicant submits no documentation to support his claims regarding this hardship. There is no evidence in the record to show the extent of this suffering and the effects it is having on his spouse's well being. Therefore, the AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96

F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.